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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-678

EXECUTIVE JET AVIATION, INC., *et al.*,
Petitioners,

v.

CITY OF CLEVELAND, OHIO, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS CITY OF CLEVELAND, OHIO AND PHILLIP A. SCHWENZ

QUESTIONS PRESENTED

The statement of the question by petitioners is unacceptable. The case presents the following questions for review.

1. Whether the district court and court of appeals correctly held the case not cognizable in admiralty when they found on undisputed evidence that the tort occurred on land, where a private jet aircraft, taking off from the municipal lakefront airport in Cleveland, suffered an immediate total loss of power by ingesting a large number of birds that were on the runway, struck a truck and then a fence—all on

land—before coming to rest in the waters of Lake Erie.

In the event the foregoing question is answered affirmatively, no other question is presented on this appeal. Should the question be answered in the negative, the Court will then need to consider—

> 2. Whether, in any case, admiralty jurisdiction can exist if the tort bears no relationship to any maritime service, navigation or commerce upon navigable waters.

The district court held there was no admiralty jurisdiction in either case. The court of appeals, having held the case not cognizable in admiralty because the tort that caused loss of the aircraft occurred on land, did not reach the second question.

STATEMENT OF THE CASE

This action arises out of the crash of a Falcon jet aircraft owned by petitioner Executive Jet Sales, Inc. and operated by petitioner Executive Jet Aviation, Inc. The crash occurred on July 28, 1968 as the plane was taking off from Burke Lakefront Airport in Cleveland, Ohio, adjacent to the navigable waters of Lake Erie, on a ferry flight to Portland, Maine. (R. 13.)[1]

Attached is a map of the airport where the accident occurred. It is a copy of Plaintiffs' Exhibit 4 at the deposition of Edward J. McAvoy, the chief investigator of this accident for the National Transportation Safety Board. (Ph. 2.) Superimposed on it in red is the runway number 6L. In all other respects the map is as marked by McAvoy at the instruction of counsel for petitioners.

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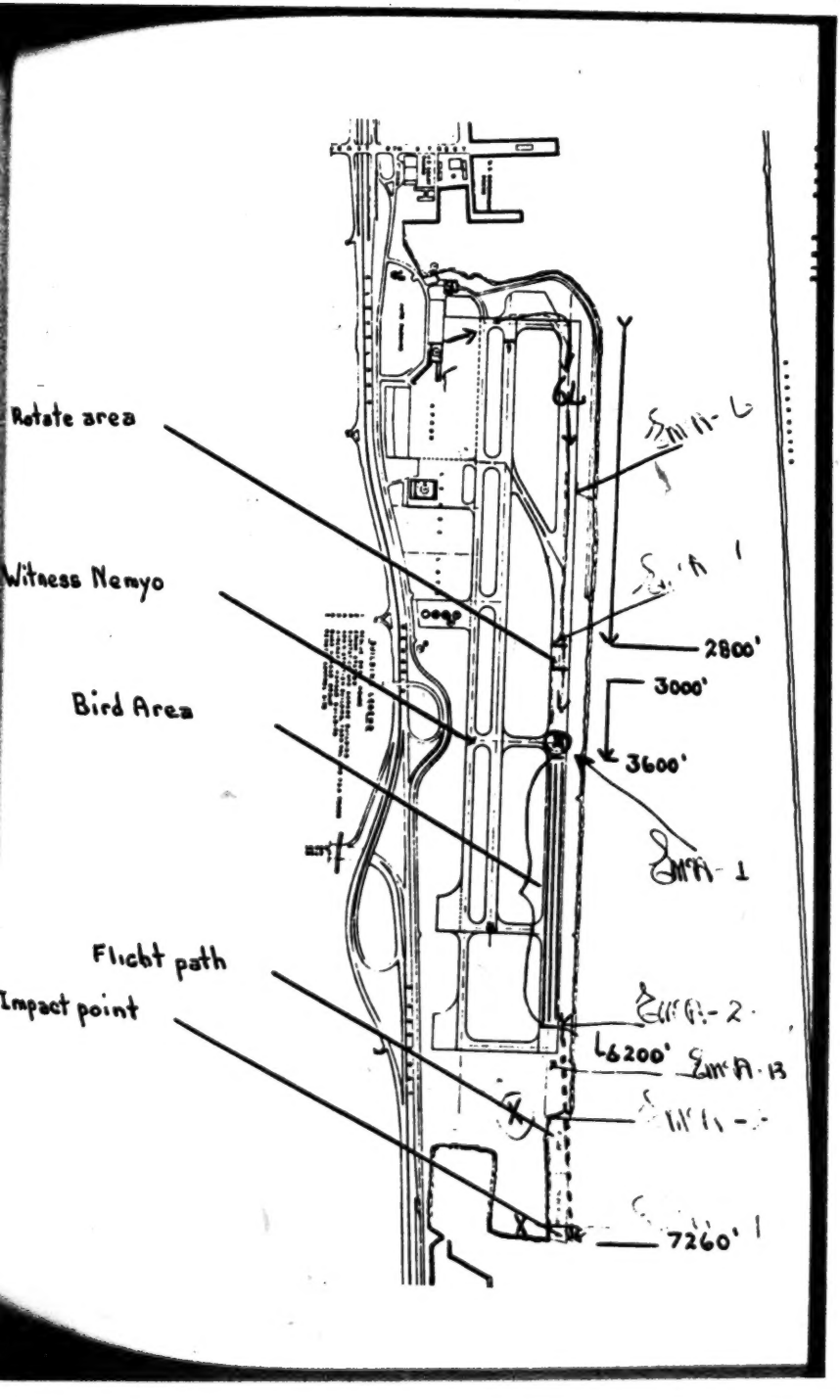
1. (R. ___) refers to the Appendix to Briefs; (Ph. ___) refers to the Appendix of Photographic Exhibits.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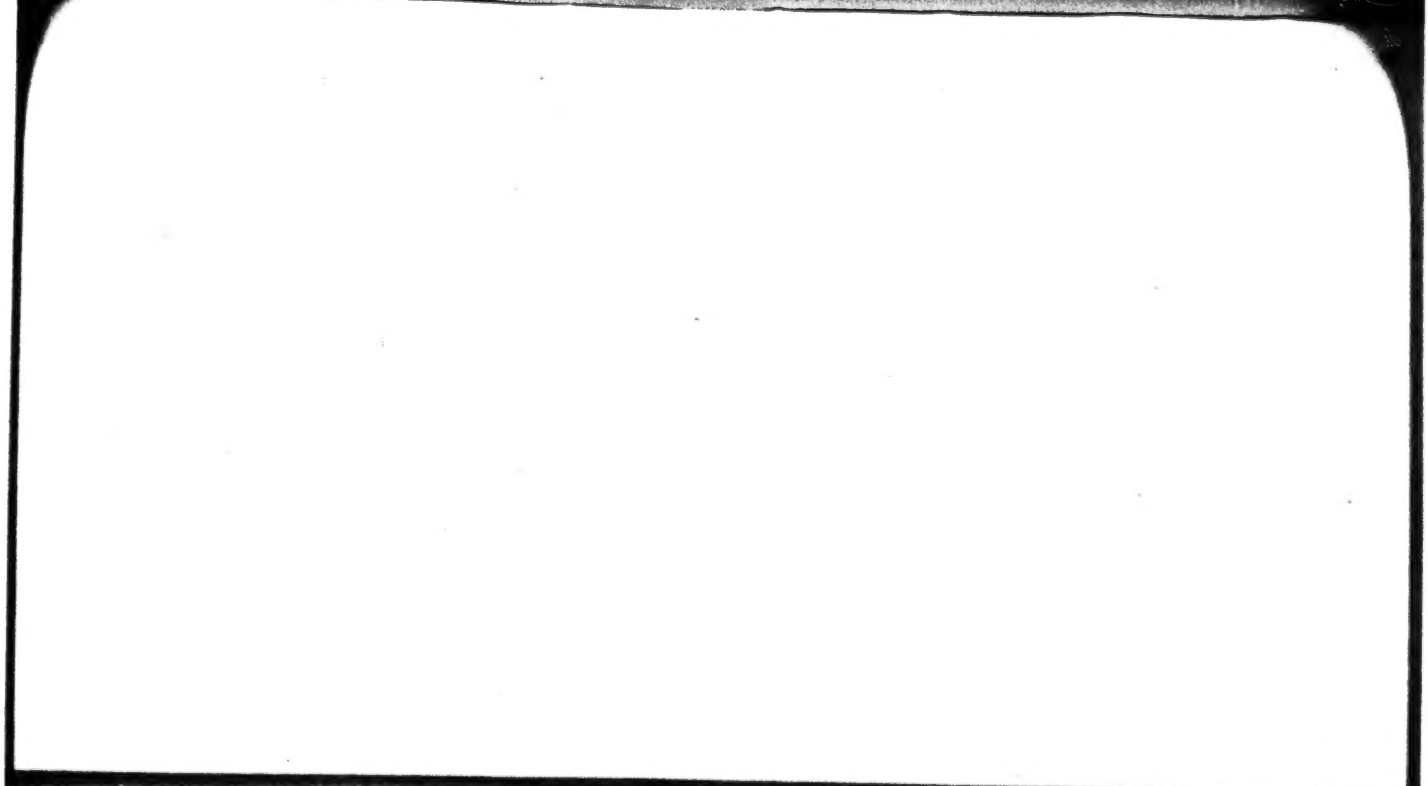

—Pilots Were Warned of Birds on Runway.

As the jet taxied out to runway 6L for takeoff there was a large flock of birds on that part of the runway marked "Bird Area" on the map. (R. 14, 18-19, Ph. 1.) Respondent Dicken, the air traffic controller in the airport control tower, warned the pilots by radio, "Caution, birds on end of runway." (R. 14.) "It looks like there are a million of them." (R. 31, 36, 37, 38.)

Ignoring that warning, the pilots commenced their takeoff and continued until the plane was rotated at a speed of approximately 125 knots (R. 14)—i.e., the nose was rotated upward so the plane would become airborne. At that point "a sea of birds on the runway became visible" to the pilots. (R. 14.)

—Bird Strike Which Precipitated Accident Occurred Over Land.

As the plane approached the birds at an altitude of approximately 75 feet above the runway, it "caused them to flush and fly into the aircraft, apparently hundreds hitting the belly and engine intakes." (R. 14.)

It is undisputed that the aircraft was struck by the birds while over the runway—i.e., over land. This is made clear not only by the pilots' statement (R. 14), and McAvoy's map showing the area over runway 6L where the bird strike occurred (Ph. 2), but also by the presence of some 314 dead birds on the runway, not counting those which remained in the engine air intakes. (R. 18-19, Ph. 1.)

—Bird Strike Caused Engine Damage Resulting in Immediate Total Loss of Power.

When the many birds struck the jet and its engine air intakes, *"There was almost immediate total loss of power."* (R. 14.) The power loss caused by the bird strike precipitated the ensuing sequence of events. And it is on the bird strike that petitioners predicate their claims. (R. 4.)

The reason for the immediate total loss of power is apparent in the testimony of McAvoy where, in response to questions by petitioners' counsel, he described the damage he observed to the plane's two engines resulting from the bird strike (R. 25-27):

> A. Examination of both engines, I recorded there was a dent in the nose cone position.
>
> The guide veins were damaged to a slight degree.
>
> * * * * *
>
> In that lines were not in their normal configuration.
>
> Q. What did you observe with regard to their abnormal configuration? A. They were bent.
>
> Q. Tell us how they were bent, what you observed with regard to them being bent. A. The guide veins were bent to various angles.
>
> Q. Were there any other observations with regard to the engines? A. The first stage compressor rotator blades were bent.
>
> Q. Were there any other observations with regard to the engines? You can go right ahead, if you like, with all of your observations that you have recorded either there, or that you remember. A. The first stage stator blades, and the second stage rotor blades were bent and torn.
>
> * * * * *

The Witness: *The compressor area of the jet engine was filled with bird debris.* By visual examination of the engine I saw a percentage of the fan rotor secondary air files were missing. The blades that were not missing, that were present, were bent and ripped.

The exit guide veins leading edges had bends and tears.

Examination of the starboard engine, I saw three dents in the nose cone.

The guide vein was missing at 2:00 o'clock position. The guide vein was wedged between the first stage rotor and first stage stator blades at the 5:00 o'clock position.

The first stage stator blades were damaged—were out of configuration because of their proximity to the first stage rotor blades.

All the visible compressor rotor blades that I saw had extensive bending and metal tearing.

In the forward area of this engine I saw bird debris.

In my aft view of the engine 75 per cent of the fan rotor secondary air files were missing. The remaining blades were bent and torn.

One exit guide vein was missing. The guide veins that were present were bent and torn.

—Plane Next Struck Truck and Airport Perimeter Fence.

The immediate total loss of power resulting from the bird strike caused the plane to descend in a semi-stalled attitude until it struck a truck parked at the end of the runway and then the airport perimeter fence. (R. 14.) That point was marked by McAvoy on his map as

"EMcA13." (Appendix to the Briefs in Court of Appeals, p. 56.)

Plaintiffs' Exhibit 42 (Ph. 5), a photograph taken by McAvoy, shows the damage to the truck and fence as a result of being struck by the jet. Plaintiffs' Exhibit 37 (Ph. 4) shows the damaged fence.

—Plane Finally Came to Rest in Water.

After striking the truck and then the fence the plane continued on until it landed on the water a short distance off the end of the runway. (R. 14.) The point where the plane came to rest on the water was marked by McAvoy on his map with the designation "Impact Point." (R. 20.) The dotted line drawn on the map by McAvoy designated the approximate path of the plane from the time it struck the fence until it reached the final resting place. (R. 22-23.)

The plane floated approximately 5 to 10 minutes before it sank. (R. 15.) "The crew returned to the airport and there were no injuries." (*Ibid.*)

—In Summary.

The foregoing facts establish the absence of admiralty jurisdiction. They demonstrate that—

—The bird strike which precipitated the entire accident occurred over land.

—The bird strike caused extensive damage to the plane's engines resulting in an immediate total loss of power.

—The plane descended in a semi-stalled attitude over land until it struck the truck and then the fence at the northeast end of runway 6L.

—It was purely fortuitous that the plane came to rest in the waters of Lake Erie rather than on the adjacent land.

—District Court Held Action Not Cognizable in Admiralty Because Tort Occurred Over Land and There Was No Maritime Nexus.

The district court set out the pertinent facts, noting that "[t]here is no genuine issue as to any of the facts set out above." (Pet. for Cert. 31a.) Based on these facts the district court found that "it is manifest that the alleged negligence became operative upon the aircraft while it was over the land." (*Id.* at 36a.) "Whether it came down upon land or upon water was largely fortuitous." (*Id.* at 37a.) The court concluded that "the undisputed facts in this case demonstrate that the tort occurred over the land." (*Id.* at 38a.) Hence, "the tort in this case did not occur upon navigable waters and the action is not cognizable in admiralty." (*Ibid.*)

The district court also found that "the operative facts of the claim in this case are concerned with the land-connected aspects of air commerce, namely, the maintenance and operation of an airport located on the land and the dangers encountered by an aircraft when using its runways for take-off. It is the Court's opinion that there exists no relationship between the 'wrong' alleged in this case and some maritime service, navigation or commerce upon navigable waters." (*Id.* at 41a.)

There being no basis for federal jurisdiction other than in admiralty, and having found the case not cognizable in admiralty, the district court dismissed the action. Thereafter petitioners refiled the case in state court where it now pends.

—Court of Appeals Affirmed on Ground Tort Occurred on Land.

The Court of Appeals for the Sixth Circuit affirmed on the sole ground that "the alleged tort occurred on land, even though the plane fell into navigable waters shortly after take off from the airport, and that no right of action is cognizable in admiralty." (Pet. for Cert. 1a.) The appellate court did not reach the question of maritime nexus, saying (*Id.* at 6a):

> Since we agree with the District Court that the alleged tort in this case occurred on land before the aircraft reached Lake Erie, and since admiralty jurisdiction does not extend to torts committed on land, it is not necessary to consider the question of maritime relationship or nexus discussed by this court in *Gowdy v. U. S.*, 412 F.2d 525, 527-29 (6th Cir.), *cert. denied*, 396 U.S. 960, and *Chapman v. City of Gross Pointe Farms*, 385 F.2d 962, 966 (6th Cir.). *See Nacirema v. Johnson*, 396 U.S. 212, 215, n. 7; *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52, 58-60; *Wiper v. Great Lakes Engineering Works*, 340 F.2d 727, 729-31 (6th Cir.).

SUMMARY OF ARGUMENT

Maritime law governs only those torts occurring on navigable waters. It does not apply to torts which occur on land. *Victory Carriers v. Law*, ... U.S. ....., 30 L. Ed. 2d 383 (1971).

Decisions of this Court establish the basic principle that for purposes of determining admiralty jurisdiction the locus of a tort is that place where the negligence of the defendant first becomes operative or effective on

plaintiff's property. The tort is deemed to occur where the impact of the act or omission produces such injury or damage as to give rise to a cause of action.

That principle is expressed in the three cases on which the court of appeals relied for its decision that the tort in this case occurred on land. *Smith & Son v. Taylor*, 276 U.S. 179 (1928); *Minnie v. Port Huron Terminal Co.*, 295 U.S. 647 (1935) and *The Admiral Peoples*, 295 U.S. 649 (1935). The principle is also basic to the decisions of this Court in *The Plymouth*, 70 U.S. (3 Wall.) 20 (1865) and *Vancouver Steamship Co., Ltd. v. Rice*, 288 U.S. 445 (1933).

The courts of appeals and district courts which have considered the question have also held that the locus of a tort is "the place where the negligent act or omission *becomes operative or effective* upon the plaintiff." *Chapman v. City of Grosse Pointe Farms*, 385 F.2d 962, 964 (6th Cir. 1967). "A tort is deemed to occur . . . where the impact of the act or omission produces such injury as to give rise to a cause of action." *Watz v. Zapata Off-Shore Company*, 431 F.2d 100, 109 (5th Cir. 1970).

None of the authorities cited by petitioners is contrary to this principle. Even *Weinstein v. Eastern Airlines, Inc.*, 316 F.2d 758 (3d Cir. 1963, *cert. denied*, 375 U.S. 940 (1963), on which petitioners primarily rely, recognizes that "the tort is deemed to occur . . . where the impact of the act or omission produces such injury as to give rise to a cause of action." (*Id.* at 765.) *Weinstein* is not contrary to the decision by the court of appeals in this case. Analysis of the record before the Third Circuit in *Weinstein* shows that the tort there occurred on water and that fact was not in dispute. Here the uncontroverted facts show the tort occurred on land.

Application of the established principle to the undisputed facts found by the courts below demonstrates that the tort here occurred on land. The negligence of which petitioners complain was in respondents permitting a bird hazard to exist on the airport runway, in failing to remove that hazard and in failing to warn petitioners' pilots of its existence. The place where such negligence became operative or effective on petitioners' jet was over the runway when the birds struck the aircraft causing the immediate total loss of power which precipitated the crash. It was at that point—over land—that the acts or omissions of respondents produced such damage to the jet as to give rise to a cause of action—even if the plane had been able to land without any further injury.

Common sense requires that the established principle of tort locality be applied to this case. There is no justification for carving out an exception to that principle applicable to aircraft tort cases. To do so would spawn litigation, breed uncertainty and create unnecessary complexities in the law. The established principle is well understood by bench and bar. It is readily applied to air crash cases as was done by both of the courts below.

Should this Court conclude that the district court and court of appeals correctly decided the locus question, it need go no further. If the Court should find, however, that the tort here had a maritime locus it will then need to determine whether a maritime nexus is also a requisite for admiralty jurisdiction and, if so, whether the wrong in this case bears a relationship to some maritime service, navigation or commerce on navigable waters.

The question whether a maritime nexus is required for a tort action to be cognizable in admiralty has not been decided by the Court. A thorough and scholarly

analysis of that question has been made by the AMERICAN LAW INSTITUTE, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS (1969). There a distinguished group of reporters, consultants and an advisory committee which included four United States Courts of Appeals judges recommended rejection of the "locality alone" test adopted by the Third Circuit and adoption of the maritime nexus requirement expressed in decisions of the Fifth and Sixth Circuits.

The logic of the analysis by the American Law Institute is unanswerable. This Court should hold that admiralty jurisdiction over torts is dependent not only on a maritime locus of the tort but that there must also exist a relationship between the wrong and some maritime service, navigation or commerce on navigable waters.

The requisite maritime nexus does not exist in this case. The wrong here—respondents' failure to remove the birds from the airport runway or warn petitioners' pilots of their presence—has no conceivable relationship to maritime affairs.

Admiralty law is a body of law that has grown up over many centuries for disposing of controversies arising out of the operation and navigation of vessels. It grew up under the civil law. It is concerned with ships and vessels, maritime liens, the general average, captures and prizes, limitation of liability, maritime insurance, claims for salvage, seamen's remedies, maintenance and cure—matters which have no bearing whatever on the operation of aircraft—whether over land or sea.

The principles found in admiralty law are well suited to the resolution of questions which arise out of nautical accidents. But they are wholly inapplicable to the adjudication of issues which arise in aircraft tort cases. There

are essentially two issues in air crash cases—liability and damages. Liability may be predicated on pilot error, faulty design, manufacture, testing or maintenance of the plane or one or more of its many components or on the negligence of airport operators, control tower operators or air traffic control. These are all highly complex questions in which the principles of admiralty law have no bearing and can afford no assistance. The Federal Aviation Regulations (14 C.F.R. Chapter I) do afford a body of rules directly applicable to air crashes. It makes much more sense to apply these rules than to hold that aviation tort litigation be governed by admiralty law, but only in those cases where the plane comes to rest in navigable waters.

There is no justification for applying maritime law to the determination of damages. Damages arising from air crashes resulting in personal injuries, death or property damage can and should be determined by the same rules of law applicable to other tort actions.

The uniformity petitioners purport to seek would not result from the application of admiralty law in this case. Applicable law would then be made to depend on the purely fortuitous circumstance whether the plane came to rest on land or navigable waters.

Bills have been introduced in recent sessions of the Congress which would provide for federal jurisdiction and a body of uniform federal law in cases arising out of aviation and space activities. Such bills have been critically received. None has been enacted.

If a uniform federal law applicable to air crash cases *should* be found desirable, such a law should be enacted by Congress, not imposed by judicial decree. Such a law should be applicable to *all* aviation accidents, not just those where the plane comes to rest in navigable waters.

We urge the Court to reject petitioners' ill-considered proposal—to declare the general principle of tort locality applicable to the present case—to hold that the case is not cognizable in admiralty because the tort occurred on land and, in any event, there was no relationship between the wrong and some maritime service, navigation or commerce on navigable waters.

ARGUMENT

I. THE ACTION IS NOT COGNIZABLE IN ADMIRALTY BECAUSE UNDISPUTED FACTS SHOW THE TORT OCCURRED ON LAND.

Maritime law governs only those torts occurring on the navigable waters of the United States. Accidents on land are not within the maritime jurisdiction of federal courts. The only exception to that rule arises under the Admiralty Extension Act of 1948 (46 U.S.C. § 740) which is not here applicable.

Thus in the recent case of *Victory Carriers v. Law*, ... U.S. ....., 30 L. Ed. 2d 383 (1971), this Court observed (30 L. Ed. 2d at 387):

> The historic view of this Court has been that the maritime tort jurisdiction of the federal courts is determined by the locality of the accident and that maritime law governs only those torts occurring on the navigable waters of the United States.

And further noted (*Id.* at 388):

> But, accidents on land were not within the maritime jurisdiction as historically construed by this Court.

After reviewing the decisions supporting the rule, the Court concluded (*Id.* at 391):

> We are not inclined at this juncture to disturb the existing precedents and to extend shoreward the reach of the maritime law further than Congress has approved. We are dealing here with the intersection of federal and state law. As the law now stands, state law has traditionally governed accidents like this one. *To afford respondent a maritime cause of action would thus intrude on an area that has heretofore been reserved to state law, would raise difficult questions concerning the extent to which state law would be displaced or preempted,* and would furnish opportunity for circumventing state workmen compensation statutes. *In these circumstances, we should proceed with caution in construing constitutional and statutory provisions dealing with the jurisdiction of the federal courts.*

The question in the case at bar then is where did the tort occur. If the tort occurred on land—as the district court and court of appeals found—the case is not cognizable in admiralty. On the undisputed evidence the tort here *did* occur on land because the alleged negligence of respondents became operative on the aircraft while it was over land and hence—

—The locus of the tort on land is supported by prior decisions of this Court.

—Decisions of the courts of appeals and district courts also support the non-maritime locus of the tort.

—There are no decisions which applied to the facts here would give the tort a maritime locus.

—Common sense requires the application of established principles to this case.

A. Decisions of This Court Support Holding That Locus of Tort Was on Land.

The decisions of this Court establish the principle that for purposes of determining admiralty jurisdiction the locus of a tort is that place where the negligence of the defendant first becomes operative or effective on the person of the plaintiff, in cases of personal injury, or on plaintiff's property, in cases, as here, where recovery is sought for property damage. Put another way, the tort is deemed to occur where the impact of the act or omission produces such injury or damage as to give rise to a cause of action.

Applying that principle to the facts of this case, the alleged negligence of respondents became operative on the jet when it was struck while over land by a large number of birds, damaging its engines to the extent that there was an immediate total loss of power, thus precipitating the ensuing events. At that moment the bird strike alone gave rise to a cause of action—indeed, it would have given rise to a cause of action even if, miraculously, the plane had been able to land without further damage. The only difference would be in the amount of damages that might be recovered. Hence the locus of the tort was over land.

The court of appeals relied principally on three decisions of this Court for its conclusion that the tort occurred on land—*Smith & Son v. Taylor*, 276 U.S. 179 (1928); *Minnie v. Port Huron Terminal Co.*, 295 U.S. 647 (1935) and *The Admiral Peoples*, 295 U.S. 649 (1935).

In *Smith & Son v. Taylor,* a longshoreman employed in unloading a vessel at dock was standing on the wharf (deemed to be an extension of the land) when he was struck by a sling loaded with cargo and knocked into the water where he was later found dead. The widow brought an action for his death under the state compensation law and recovered a judgment which was affirmed in the court of appeals. It was defendant's claim that the case lay within the admiralty jurisdiction of the court and hence the state compensation law did not apply. The issue thus before this Court was delineated as follows (276 U.S. at 181):

> If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated § 2 of Art. 3. But, if the cause of action arose upon the land, the state law is applicable.

The contention of the defendant was summarized by the Court (*Id.* at 182):

> It [the defendant] argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction.

Note that this is precisely the basis on which petitioners seek to invoke admiralty jurisdiction in the case at bar. They contend that their plane—after striking the flock of birds over the runway and being crippled by the immediate loss of all power from its engines, and after striking the truck and fence at the end of the runway —finally landed in the waters of Lake Erie a short distance off the end of the runway where it finally sank

and was totally destroyed. Thus, they say, since the suit is one for damages sustained when the plane sank in the lake, the case is one of admiralty jurisdiction.

This Court, however, rejected that contention, pointing out that "this is a partial view that cannot be sustained." (*Ibid.*) The Court continued (*Ibid.*):

> The blow by the sling was what gave rise to the cause of action. *It was given and took effect while deceased was upon the land.* It was the sole, immediate and proximate cause of his death. *The G. R. Booth,* 171 U.S. 450, 460. *The substance and consummation of the occurrence which gave rise to the cause of action took place on land.*

In the present case it could likewise be said that the impact of the birds on the plane and its engines was "what gave rise to the cause of action." That event "took effect while [the plane] was upon the land." It was "the sole, immediate and proximate cause of [the crash] . . . The substance and consummation of the occurrence which gave rise to the cause of action took place on land."

The converse of the factual situation in *Smith & Son* came before this Court in *Minnie v. Port Huron Terminal Co.,* 295 U.S. 647 (1935), where a longshoreman was working on the deck of a vessel when he was struck by a swinging hoist and knocked onto the wharf. Observing that, "We had the converse case before us in *Smith & Son v. Taylor,* 276 U.S. 179" (*Id.* at 648), the Court held the case one of admiralty jurisdiction, because (*Id.* at 649):

> If, when the blow from a swinging crane knocks a longshoreman from the dock into the water, the cause of action arises on the land, it must follow,

upon the same reasoning, that when he is struck upon the vessel and the blow throws him upon the dock the cause of action arises on the vessel.

In *The Admiral Peoples*, 295 U.S. 649 (1935), a passenger fell from the ship's gangplank to the dock, sustaining injuries in the fall. The question before this Court was whether the libel had properly been brought in admiralty, since "Where the cause of action arises upon the land, the state law is applicable." (*Id.* at 651.)

The Court held that "the gangplank was part of the ship, and the cause of action in admiralty." (Syl.) The Court noted that (*Id.* at 653):

> [T]he Circuit Court of Appeals said: *"The cause of action originated and the injury had commenced on the ship, the consummation somewhere being inevitable. It is not of vital importance to the admiralty jurisdiction whether the injury culminated on the stringpiece of the wharf or in the water."*

Here too the cause of action originated and the damage to the jet had commenced on the airport, "the consummation somewhere being inevitable. It is not of vital importance to the admiralty jurisdiction whether the injury culminated on the [land] or in the water."

Petitioners rely on *The Plymouth*, 70 U.S. (3 Wall.) 20 (1865), in support of their contention that the tort here occurred on the water. On the contrary, however, *The Plymouth* is entirely consistent with the three cases noted above. Analysis of the decision demonstrates that applied to the facts at bar it places the locus of the tort on land.

In *The Plymouth* negligence committed on board a ship tied up to a wharf caused a fire aboard ship which

spread to the wharf and surrounding buildings. A libel was filed against the owners of the vessel to recover for the damage to the wharf and buildings. This Court held the tort occurred on land and the case was not cognizable in admiralty. To be sure, as the Court observed, "The origin of the wrong was on the water." (*Id.* at 33). But the Court concluded that "the substance and consummation of the injury [was] on land." (*Ibid.*) It is obvious that the place where the wrong became operative on libelants' property (the wharf and buildings) was on land. Libelants had no cause of action when the fire was started aboard ship, but only when the fire took effect on their property. It was there—on land—where the tort occurred and that is exactly consistent with the holding of both lower courts in the case at bar.

Petitioners deride the three decisions of this Court on which the court of appeals relied as "two longshoremen's compensation cases dated 1928 and 1935 . . . and one gangplank slip-and-fall case dated 1935." (Brief for Petitioners, p. 41.) They describe these decisions as "inconclusive, as well as outdated, authority." (*Id.* at 49.)

The fact is, however, that the *principle* established by these three cases is as sound today as it was when they were decided. Such changes as have taken place in the law applicable to longshoremen have not affected the validity of the principle that the locus of a tort is that place where the wrong becomes operative on the person or property of the plaintiff—the place where the impact of the wrong produces such injury or damage as to give rise to a cause of action. Thus in the recent opinion in *Victory Carriers v. Law*, ... U.S. ....., 30 L. Ed. 2d 383 (1971), this Court cited both *Smith & Son v. Taylor* and *Minnie v. Port Huron Terminal Co.* with approval.

This principle was also followed in *Vancouver Steamship Co., Ltd. v. Rice*, 288 U.S. 445 (1933). A stevedore, hit aboard the vessel by a falling sling of lumber, was taken ashore where he died one hour later. The administratrix "electing under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. § 933) to assert her claim against a third party, filed a libel in admiralty." (*Id.* at 446.) This brought objection that admiralty had no jurisdiction because the cause of action depended on the Oregon Wrongful Death Act and therefore did not, and could not, arise "until death actually occurs." (*Id.* at 445.) Since death came on shore, it was urged "that the cause of action arose on land" (*Id.* at 447) and "the admiralty court was without jurisdiction." (*Id.* at 445.) This Court rejected the argument because (*Id.* at 447):

> The right to recover for death depends upon the law of the place of the act or omission that caused it *and not upon that of the place where death occurred.*

B. Decisions of the Courts of Appeals and District Courts Demonstrate That Locus of Tort Was on Land.

The principle expressed in the decisions of this Court discussed above has also been followed by the courts of appeals and district courts. Thus in *Wiper v. Great Lakes Engineering Works*, 340 F.2d 727 (6th Cir. 1965), *cert. denied*, 382 U.S. 812 (1965), the decedent was alleged to have fallen from a dock and to have died from drowning due to the negligent maintenance of the dock. The court of appeals held that there was no maritime jurisdiction because the tort occurred on the dock—considered an extension of land—even though the death by drowning occurred in the water. The court reasoned (*Id.* at 730):

> [T]he negligently maintained dock which presumably caused the decedent to fall was land, and the decedent was on land at the time he was caused to fall. Thus, *the tort was complete before decedent ever touched the water* and this being true, *the subsequent drowning is significant not to determine the maritime or non-maritime nature of this action but only as it relates to damages.*

Applying *Wiper* to the present facts, petitioners' aircraft was over land when it was caused to fall. The tort was thus complete before the plane ever touched the water. That being true the subsequent immersion of the plane "is significant not to determine the maritime or non-maritime nature of this action but only as it relates to damages." (340 F.2d at 730.)

Similarly, in *Chapman v. City of Grosse Pointe Farms*, 385 F.2d 962 (6th Cir. 1967), the court recognized that the governing principle in determining the locus of a tort is that reference should properly be made *"to the place where the negligent act or omission becomes operative or effective upon the plaintiff."* (*Id.* at 964.)

In *Watz v. Zapata Off-Shore Company*, 431 F.2d 100 (5th Cir. 1970), the court stated (*Id.* at 109):

> A tort is deemed to occur not where the wrongful act or omission has its inception, but where the impact of the act or omission produces such injury as to give rise to a cause of action.

It is significant that while there was no question raised concerning the locus of the tort in *Weinstein v. Eastern Airlines, Inc.*, 316 F.2d 758 (3d Cir. 1963), the court recognized the general principle governing the determination of tort locality as follows (*Id.* at 765):

> In applying the "locality" test for admiralty jurisdiction, the tort is deemed to occur, not where the wrongful act or omission has its inception, but where the impact of the act or omission produces such injury as to give rise to a cause of action.

The principle has also been adopted by district courts in the following cases: *Wilson v. Transocean Airlines*, 121 F. Supp. 85 (N.D. Calif. 1954); *Middleton v. United Aircraft Corporation*, 204 F. Supp. 856 (S.D.N.Y. 1960); *David Crystal, Inc. v. Cunard Steam-Ship Company*, 223 F. Supp. 273 (S.D.N.Y. 1963); *Thomson v. Chesapeake Yacht Club, Inc.*, 255 F. Supp. 555 (D. Md. 1966); *McCall v. Susquehanna Electric Company*, 278 F. Supp. 209 (D. Md. 1968); *O'Connor & Company v. City of Pascagoula, Mississippi*, 304 F. Supp. 681 (S.D. Miss. 1969); *Howmet Corporation v. Tokyo Shipping Co.*, 320 F. Supp. 975 (D. Del. 1971); *Dudley v. Bayou Fabricators, Inc.*, 330 F. Supp. 788 (S.D. Ala. 1971).

C. Petitioners' Authorities Do Not Support Any Exception to the Established Principle.

None of the decisions cited by petitioners is contrary to the principle enunciated in the foregoing decisions. Not one of petitioners' authorities would fix the locus of the tort at any place other than that at which the wrong became operative or effective on petitioners' aircraft.

Petitioners rely principally on the decision in *Weinstein v. Eastern Airlines, Inc.*, 316 F.2d 758 (3d Cir. 1963), *cert. denied*, 375 U.S. 940 (1963). They claim *Weinstein* is in direct and irreconcilable conflict with the decision of the court of appeals in the present case.

This is simply not true. On the facts before the court in *Weinstein* the crash there occurred on the navigable

waters of Boston Harbor and the tort thus had a maritime locus. This is diametrically opposite to the facts here where the tort clearly occurred on land.

To appreciate fully the basis of the *Weinstein* decision it is necessary to review briefly the background of the case as disclosed by the record on file in the Third Circuit. The matter came before the district court on exceptions of defendant Eastern Air Lines to the libel on the grounds that (Weinstein R. 31a):[2]

> The *facts averred in the Libel* do not constitute a cause of action against Eastern Air Lines, Inc., within the admiralty jurisdiction of this Court.

and

> This Court does not have jurisdiction in admiralty against Eastern Air Lines, Inc. by reason of *the allegations that the place of the crash was within the territorial waters of the Commonwealth of Massachusetts.*

It is thus apparent that the *only* facts before the district court and the court of appeals in *Weinstein* were the allegations of the libel. Paragraph 9 of the libel alleged (Weinstein R. 5a):

> Shortly after the said aircraft had become airborne, following take-off from the said airport, by reason of the negligence of the respondents, and each of them, and by virtue of their respective breach of warranties said aircraft crashed into the navigable waters of Boston Harbor, causing libellant's decedent to suffer severe and disabling injuries resulting in his death.

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2. References to the printed appendix in the *Weinstein* case on file in the United States Court of Appeals for the Third Circuit will be designated as (Weinstein R. __a).

Eastern admitted in its answer "that said aircraft crashed into an inlet or body of water on or about the date averred and that libellant's decedent was killed." (Weinstein R. 25a.)

The district court had before it only the allegation, admitted by Eastern, that the aircraft had crashed into the navigable waters of Boston Harbor causing decedent's death. Consequently court and counsel accepted the fact that the locus of the tort was on navigable water and the only question presented for decision by the district court was whether that fact alone was sufficient to confer admiralty jurisdiction on the court or whether it was also necessary to find a maritime nexus as a basis for admiralty jurisdiction.

The district court, after careful review of the authorities, concluded that not only a maritime locality but "some maritime connection is necessary for admiralty jurisdiction." *Weinstein v. Eastern Airlines, Inc.*, 203 F. Supp. 430, 433 (E.D. Pa. 1962). Since the district court found no maritime nexus it sustained Eastern's exceptions and dismissed the libel.

The Court of Appeals for the Third Circuit took a different view, however, and reversed the decision of the district court because (316 F.2d at 761):

> The critical factor in determining whether a tort claim comes within the broad statutory grant of admiralty jurisdiction is the situs of the tort; i.e., the place where it happened. *If the tort occurred on navigable waters, the claim is one that lies within the jurisdiction of the courts of admiralty; nothing more is required.*

Petitioners contend that the actual facts in the Boston Harbor crash were similar to those in the present case

and hence a conflict exists. Whether that is true or not is beside the point. The fact is that neither the district court nor the court of appeals in *Weinstein* had any facts of record other than the admitted allegation that after take off the plane crashed into the navigable waters of Boston Harbor—thus the location of the tort was maritime.

In the present case, however, the facts of the crash are established by undisputed evidence. These facts show beyond any question that the place where the tort occurred was over land. The cases are thus clearly distinguishable.

To be sure, there is admittedly a conflict between the Third and Sixth Circuits as to the requirement of a maritime nexus. In *Weinstein* the Third Circuit held that a maritime location alone is sufficient to establish admiralty jurisdiction. "[N]othing more is required." (*Ibid.*) The Sixth Circuit has held in other cases—though it did not reach this point in the present case—that in addition to a maritime locus there must be a maritime nexus; i.e., "A relationship must exist between the wrong and some maritime service, navigation or commerce on navigable waters."[3]

This conflict may well be one which should be resolved by this Court. But *this case* does *not* present a record on which the conflict can be decided. The judgment of the Sixth Circuit here does *not* conflict with *Weinstein* or any other court of appeals decision.

Petitioners have cited a number of cases of aircraft crashes in navigable waters wherein the courts held them cognizable in admiralty, and have suggested to the Court

3. Chapman v. City of Grosse Pointe Farms, 385 F.2d 962, 966 (6th Cir. 1967); Gowdy v. United States, 412 F.2d 525 (6th Cir. 1969), *cert. denied*, 396 U.S. 960 (1969).

that a conflict exists between such decisions and the results below. Examination of these decisions, however, will disclose that in each case the tort occurred on or over navigable waters.

The cases cited by petitioners fall into two categories. First are those cases in which the court has adopted the "locality alone" test and held admiralty jurisdiction to rest on the sole fact that the tort occurred on navigable waters—not true in this case. Second are those cases arising under the Death on the High Seas Act (46 U.S.C. § 761) which by its very nature is not applicable in this case.

D. Common Sense Requires Application of Established Principle in This Case.

The chain of events surrounding this accident is spelled out by undisputed evidence. The only question is at what point in this chain of events the alleged tort occurred. Petitioners contend—and we agree—that a tort does not occur at the time or place of a negligent act or omission alone. Negligence unproductive of injury does not give rise to any cause of action and no tort comes into being at that stage of events.

The well settled principle is that the tort occurs where the wrong becomes operative or effective on petitioners' property so as to cause some damage sufficient to give rise to a cause of action. In the present case that point was reached while the plane was over land.

Petitioners contend, however, that in aircraft crash cases the tort does not occur until the damage resulting from the negligent act or omission is complete or that the locus of the tort is that place where the major amount of damage occurs.

This Court will have to decide whether the district court and court of appeals correctly held that the tort occurred over land. In reaching that decision there are three alternative courses the Court might take:

1. The Court might, and should, reaffirm the established principle of law stated above, apply that principle to the present facts and hold—as did the courts below—that the locus of this tort was on land.

2. The Court might reject the established principle and enunciate a new doctrine for determining the locus of a tort applicable to all cases. Surely there is no reason for adopting such a radical approach. There is no suggestion in any of the authorities that the presently established principle has not worked well or that it has resulted in injustice or has been difficult to apply. Rejection of the established principle would create utter confusion in the law and would require years of litigation to resolve. Even petitioners do not advocate such an approach.

3. The Court might—if it were to follow petitioners' urging—reaffirm the established principle in its general application, but carve out an exception for airplane accident cases. Petitioners say this is necessary because airplane cases differ from cases of injured swimmers, longshoremen and gangplank slip-and-fall cases. But automobile accident cases are also different, yet it would be absurd to say that if two cars were to collide on a bridge over navigable waters and one of them were thrown into the water, that an action for damage to that car would lie in admiralty simply because the car came to rest in navigable waters, or because the major damage resulted from its immersion. Each case presents its own particular

facts, but the basic principle applicable to those facts remains unchanged. Petitioners suggest no valid reason why an exception to the general rule should be made in airplane cases other than that it would produce here the result they seek.

Petitioners argue that "Injecting an outdated and amorphous test from aberrant longshoremen's compensation cases into the area of aviation and space admiralty cases will spawn litigation, create unnecessary complexities and engage the courts in metaphysical exercises to determine where 'the substance and consummation of the occurrence which gave rise to the cause of action took place.'" (Brief of Petitioners, p. 13.) But petitioners do not offer any reason or evidence in support of that contention. Quite the contrary, the law is now well settled. The established principle is well understood by both bench and bar. It can be readily applied to air crash cases as both the district court and court of appeals did here. On the other hand, if an exception to the general rule were carved out for airplane cases as petitioners urge, such an exception would indeed spawn litigation, breed uncertainty in the law and create unnecessary complexities.

Suppose, for example, two planes were to collide in mid-air over land; one were to plummet to the land below while the other were to crash into navigable waters near the shore. If each owner were to sue the operator of the other plane for his property damage, would the locus of the tort as to one plane be on land, the other on water—would one suit be controlled by state law, the other by admiralty law? That is the absurd result that would follow from adoption of the exception urged by petitioners.

Of course, if the objective is to attain certainty in the law, the surest way to achieve that result is to declare

that aircraft accident cases are not governed by admiralty law (other than as provided by statute in the Death on the High Seas Act, 46 U.S.C. § 761) no matter where the tort or crash may have occurred. Should this Court reach such point, that is exactly what the Court should do as we shall now demonstrate.

II. EVEN IF TORT OCCURRED ON WATER, ACTION IS NOT COGNIZABLE IN ADMIRALTY BECAUSE ALLEGED WRONG WAS NOT RELATED TO MARITIME SERVICE, NAVIGATION OR COMMERCE ON NAVIGABLE WATER.

The district court found two grounds for denying admiralty jurisdiction. The tort occurred on land and the wrong alleged was not related to any maritime service, navigation or commerce on navigable water; i.e., there was no maritime nexus. The court of appeals did not consider the second point because it found that the tort occurred on land and rested its decision on that point alone.

Should this Court conclude that the district court and court of appeals correctly decided the locus question, it need go no further though it might, if it wished to do so, go on to decide the maritime nexus question. On the other hand, if the Court finds that the tort here had a maritime locus it will then need to determine whether a maritime nexus is required for admiralty jurisdiction and, if so, whether the wrong in this case bears a relationship to some maritime service, navigation or commerce on navigable waters. We therefore turn to a discussion of those points.

A. Admiralty Jurisdiction Is Dependent Not Only on a Maritime Locus But Also on a Maritime Nexus.

Some courts have held that admiralty jurisdiction over torts is determined solely by the locus of the tort. If the tort occurred on navigable waters nothing more is required. Other courts (including the Sixth Circuit)[4] have held that more than locality is required for a tort action to be cognizable in admiralty. There must also be some maritime nexus; i.e., there must be a relationship between the wrong and some maritime service, navigation or commerce on navigable waters.

The question whether a maritime nexus is necessary for admiralty jurisdiction has not been decided by this Court. In considering whether it should adopt the "locality alone" test or the "maritime nexus" rule the Court may find most helpful the thorough and scholarly analysis of that question by the American Law Institute in its STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS, adopted and promulgated by the Institute and published in December 1969. In addition to a distinguished group of reporters and consultants, the advisory committee for the study included four United States Courts of Appeals judges—Judge Henry J. Friendly of the Second Circuit, Judge Albert B. Maris (Ret.) of the Third Circuit, Judge John Minor Wisdom of the Fifth Circuit and Judge Charles Merton Merrill of the Ninth Circuit.

The American Law Institute Study strongly recommended rejection of the "locality alone" test and urged

4. *See* note 3, *supra*. The Fifth Circuit has also held that a maritime nexus is necessary for admiralty jurisdiction in the recent case of Peytavin v. Government Employees Insurance Company, 453 F.2d 1121 (5th Cir. 1972).

adoption of the maritime nexus requirement as expressed in *Chapman v. City of Grosse Pointe Farms*, 385 F.2d 962 (6th Cir. 1967). The Institute was not impressed by "language in the cases suggesting that admiralty jurisdiction over torts is dependent on locality alone," noting that "formulation of the rule, however, arose at a time when it was difficult to conceive of an occurrence on water other than in connection with a vessel." (ALI Study, p. 231.)

The Institute was quite critical of the decision of the Third Circuit in *Weinstein*, saying (*Ibid.*):

> If a plane takes off from Boston's Logan Airport bound for Philadelphia, and crashes on takeoff, it *makes little sense that the next of kin of the passengers killed should be left to their usual remedies, ordinarily in state court, if the plane crashes on land, but that they have access to a federal court, and the distinctive substantive law of admiralty applies, if the wrecked plane ends up in the waters of Boston Harbor.* This result has been found to follow, however, from the rule that locality alone is enough to give jurisdiction in admiralty. *Weinstein* v. *Eastern Airlines, Inc.*, 316 F.2d 758 (3d Cir. 1963).

The Institute reviewed the existing state of authority on the "locality alone" test and reported (*Id.* at 231-2):

> Despite the many cases saying that locality is enough for admiralty jurisdiction, this can hardly be regarded as settled. A district court, in holding that there was no admiralty jurisdiction when a swimmer at a public beach was injured by a submerged object on the bottom, said of the "locality alone" test that

> this position has not been adopted either by the text writers or by the courts. The basis for admiralty jurisdiction must be a combination of a maritime wrong and a maritime location. A maritime wrong generally has been concluded to be one which in some way is involved with shipping or commerce.

McGuire v. City of New York, 192 F.Supp. 866, 868-869 (S.D.N.Y. 1961). *See also Smith v. Guerrant*, 290 F. Supp. 111 (S.D.Tex. 1968). Distinguished commentators have either thought the question an open one or have rejected the "locality alone" test. BENEDICT, ADMIRALTY § 127 (6th ed. 1940); CURRIE, FEDERAL COURTS: CASES AND MATERIALS 403-405 (1968); GILMORE & BLACK, THE LAW OF ADMIRALTY 22 (1957); Brown, *Jurisdiction of the Admiralty in Cases of Tort*, 9 COLUM.L.REV. 1, 8 (1909); Hough, *Admiralty Jurisdiction—Of Late Years*, 37 HARV.L.REV. 529, 532 (1924); Robinson, *Tort Jurisdiction in American Admiralty*, 84 U.PA.L.REV. 716, 734 (1936); Black, *Admiralty, Jurisdiction: Critique and Suggestions*, 50 COLUM.L. REV. 259, 264 (1950); Comment, *Admiralty Jurisdiction: Airplanes and Wrongful Death in Territorial Waters*, 64 COLUM.L.REV. 1084, 1091-1092 (1964).

Commenting on the position of this Court on the matter, the Institute observed (*Id.* at 232):

> *It cannot be said that the Supreme Court is committed to the "locality alone" test. The cases in which it has spoken of locality as determinative have been cases in which it was announcing a rule of exclusion.* The locality test is a necessary condition of admiralty jurisdiction over torts, but *the Court has not said that it is a sufficient condition. Indeed the Court expressly*

left the matter open when it was last confronted with the question directly. It said that it need not decide whether locality alone is enough for jurisdiction, since:

> If more is required than the locality of the wrong in order to give the court jurisdiction, the relation of the wrong to maritime service, to navigation and to commerce on navigable waters was quite sufficient.

Atlantic Transp. Co. v. Imbrovek, 234 U.S. 52, 62 (1914).

The logic of the analysis of this matter by the Institute is unanswerable. This Court should hold that admiralty jurisdiction over torts is dependent not only on a maritime locus of the tort but that there must also exist a relationship between the wrong and some maritime service, navigation or commerce on navigable waters.

B. The Wrong Here Has No Relationship Whatsoever to Any Maritime Service, Navigation or Commerce on Navigable Waters.

In considering whether there is present in this case the requisite maritime nexus to confer admiralty jurisdiction on the district court, it is not sufficient to find some relationship between aviation generally and maritime affairs. It is thus wholly irrelevant that airplanes have in large measure supplanted ships in carrying passengers across the oceans of the world.

If a maritime nexus is to be required the test is whether the *wrong* has a relationship to maritime affairs. It is thus necessary to have in mind the nature of the "wrong" on which petitioners base their claims against respondents.

In paragraph 8 of their complaint, petitioners claim that respondents City of Cleveland and Schwenz were negligent in their operation, control, maintenance, supervision and inspection of the airport, in failing to remove the large flock of birds from the runway and in failing to warn petitioners' pilots of the existence of that hazard. (R. 3-4.) It is significant that this allegation relates exclusively to the operation, maintenance and control of an airport entirely on land although located adjacent to navigable waters. The "wrong" consists of the creation of a hazard *on land* and the failure of respondents to warn petitioners of that *land based* hazard.

It is too obvious to require further elaboration that the "wrong" in this case had no conceivable relationship to any maritime service, navigation or commerce on navigable waters.

C. Admiralty Law Is Not Suited for the Adjudication of Issues Arising in Aviation Tort Cases.

Petitioners argue that aircraft have become a major instrument of travel and commerce across the high seas and that planes have largely supplanted ships in carrying passengers over the oceans. (Brief of Petitioners, p. 60.) Petitioners claim, as did the dissenting judge below, that "there is some maritime character to any flight of any airplane over any navigable water." (*Id.* at 59.)

It is true that the majority of transoceanic passengers today travel by plane. But analysis will demonstrate that there is no more maritime character to a New York-London flight than there is to a New York-Los Angeles flight. Certainly there was no maritime character whatever to the flight on which petitioners' plane was bound

at the time of its crash—from Cleveland, Ohio to Bangor, Maine, more than 99.99% over land.

Admiralty law is a body of law that has grown up over many centuries for disposing of controversies arising out of the operation and navigation of vessels. *See* BENEDICT, ADMIRALTY §§ 6-8, 734-737 (6th ed. 1940); GILMORE & BLACK, ADMIRALTY §§ 1-1 through 1-10 (1957). Maritime law grew up under the tutelage of the civil law. It is concerned with ships and vessels, maritime liens, the general average, captures and prizes, limitation of liability, maritime insurance, claims for salvage, seamen's remedies, maintenance and cure—matters which have no conceivable bearing on the operation of aircraft, whether over water or land.

If two vessels collide at sea or a ship founders off Cape Hatteras, admiralty law—as it has developed over years of maritime activity—is well suited to resolve questions of fault, liability, and all the essentially nautical questions that arise from such a catastrophe. But the same principles are wholly inapplicable to the determination of fault or liability when two planes collide or an aircraft crashes. That the crash occurs over water does not change that fact.

Litigation arising out of air crashes—whether on land or sea—is essentially concerned with the judicial determination of two issues; first, fault and resulting liability and second, the amount of recovery. Admiralty law can be of no assistance in the determination of either of those issues.

In an air crash case liability may be predicated on one or more of several claims. One of the common claims, of course, is pilot error. But the problems of flying and navigating a modern jet aircraft clearly have no more relationship to the operation and navigation of vessels

than they do to driving a car on the highways. It would make just as much sense to say that air crash cases in the State of Ohio should be governed by the Motor Vehicle Traffic Code of the State of Ohio (Ohio Rev. Code, Ch. 4511) simply because airplanes now carry passengers who formerly traveled by motor vehicle.

In many air crash cases claims are made that the manufacturer of the plane or one or more of its components was negligent in the design, manufacture or testing of the aircraft or component. There may be claims that the operator of the plane was negligent in the maintenance of the aircraft or one or more of its components. Surely it needs no extended exposition to demonstrate that the complex, technical questions presented by such claims are wholly unrelated to any possible aspect of admiralty law.

The third type of claim in air crash cases is that of error on the part of the airport operator, control tower or air traffic control. That is the basis for the claims asserted by petitioners in this case. Yet it is inconceivable that any aspect of admiralty law would be of assistance to the court in resolving such questions in the present case or in any other aircraft tort action.

A large body of regulations has been promulgated by the Federal Aviation Administration for the purpose of governing the operation of aircraft, the design, manufacture and testing of airplanes and their components (and approval thereof by the F.A.A.), the maintenance of planes and equipment and also the operation of airports and the control of air traffic. (Federal Aviation Regulations, 14 C.F.R. Chapter I.) Experience indicates that trial courts customarily utilize these regulations, to the extent applicable, in the trial of air crash cases in order to determine—or submit to a jury for determination—questions

concerning the operation of planes, their design, manufacture, testing and maintenance and the control of air traffic.

Surely it makes sense to apply to the adjudication of air crash cases—whether on land or sea—rules adopted and promulgated specifically for application to aircraft. It makes no sense whatever to say that the adjudication of such disputes should be governed by admiralty law—a body of law designed for application to ships and vessels.

So far as damages are concerned, there is no justification for applying maritime law. Damages arising from air crashes which result in personal injuries, death or property damage can and should be determined by the same rules of law applicable to other tort actions.

D. If a Uniform Law for Aviation Tort Cases Be Desirable, It Should Be Enacted by Congress, Not Imposed by Judicial Decree.

Petitioners contend that "application of federal general maritime law in admiralty cases insures uniformity of decisions and uniformity of results in multiparty cases, and eliminates complex choice of law problems." (Brief of Petitioners, p. 56.)

On the contrary, if petitioners prevail, rather than obtaining uniformity of decisions and results, the decision and result in an air crash case will be made to depend on the purely fortuitous circumstance whether the plane comes to rest on land or in navigable waters. As the American Law Institute Study put the matter (p. 231):

> If a plane takes off from Boston's Logan Airport bound for Philadelphia, and crashes on takeoff, *it makes little sense that the next of kin of the pas-*

> *sengers killed should be left to their usual remedies, ordinarily in state court, if the plane crashes on land, but that they have access to a federal court, and the distinctive substantive law of admiralty applies, if the wrecked plane ends up in the waters of Boston Harbor.*

It is significant to note that bills were introduced in the 91st Congress "to improve the judicial machinery by providing for federal jurisdiction and a body of uniform federal law for cases arising out of aviation and space activities." (S.961, H.R.8373, 91st Cong.) Similar legislation had been introduced in earlier sessions of the Congress. (S.3305, S.3306 and S.4089, 90th Cong.) To date no such legislation has been enacted by the Congress.

Opinions as to the desirability of such legislation are certainly not unanimous. One need only examine the record of Hearings on S.961 before the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, United States Senate, 91st Congress, First Session, to recognize that there is a wide divergence of views on the necessity for and desirability of a uniform federal law governing aircraft crash litigation. One of the witnesses at the hearings summed up the reaction of the bar to the bill quite accurately. After mentioning a number of meetings of legal groups and committee deliberations in which S.961 had been discussed, he said (S.961 Hearings, p. 253):

> At all of these meetings and in all of these committee deliberations the only ones to support the Bill, aside from its sponsor, Senator Tydings, were Judge Hall and Mr. Dreyfuss. To my knowledge, *not one experienced trial lawyer active in this field, for plaintiff or defendant, favors it.*

Simply expressed, the opposition to the Bill results from the fact that *there is no manifest need for it.* The present judicial machinery, both state and Federal, functions well in handling the problem. The Bill would constitute the first major incursion into the traditional application of state law, and jurisdiction of state courts, into the field of torts. Other Federal statutes such as the Jones Act, the Federal Employers Liability Act, and the Death on the High Seas Act, were enacted to fill a void—to supply a Federal remedy where no state remedy existed. *Here there is adequate state law and there are adequate state remedies,* and the Bill would cut down state jurisdiction and the application of state law.

If, however, a uniform federal law applicable to aviation tort cases is desirable, such a law should be enacted by Congress, not imposed by judicial decree.

Certainly the scheme proposed by petitioners is not acceptable. They would achieve so-called uniformity by applying maritime law (a body of law unsuited to aircraft crash litigation), not uniformly to all air crashes in the United States, but only to those in which the aircraft comes to rest in navigable waters. Nothing is less likely to produce uniform results.

We urge the court to reject this ill-considered proposal—a proposal which has no merit and no reason other than producing the result petitioners desire in this case.

CONCLUSION

The court of appeals correctly held that "the alleged tort occurred on land, even though the plane fell into navigable waters shortly after take off from the airport, and that no right of action is cognizable in admiralty." (Pet. for Cert. 1a.) That decision accords with settled law pronounced by this Court.

There is no justification for applying admiralty law to this case. Admiralty law is neither relevant nor suited to the adjudication of legal issues arising in aircraft tort litigation.

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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